

**Letter of Findings: 01-20190589
Individual Income Tax
For the Year 2015**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The Department was within its authority to adjust Individual's 2015 Indiana IT-40. Individual did not provide sufficient evidence to overcome her burden to prove the Department's adjustment incorrect.

ISSUE

I. Individual Income Tax - Indiana IT-40 Adjustment.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-8-2; IC § 6-8.1-9.5-2; IC § 6-3-4-8; IC § 6-8.1-7-1; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012).

Taxpayer protests the Department's assessment.

STATEMENT OF FACTS

Taxpayer is an Individual who lives in Indiana and filed a 2015 Indiana Individual income tax return ("2015 return"). The Indiana Department of Revenue ("Department") adjusted Taxpayer's 2015 return. The Department determined that Taxpayer did not make an estimated payment she had claimed on the 2015 return. The Department also offset Taxpayer's 2015 return refund with an outstanding liability from Taxpayer's previous business. An administrative hearing was held, in which Taxpayer's representative has explained Taxpayer's protest. This Letter of Findings results. Additional facts will be provided as necessary.

I. Individual Income Tax - Indiana IT-40 Adjustment.

DISCUSSION

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Further, when an agency is charged with enforcing a statute, the courts defer to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, interpretations of Indiana tax law contained within this decision, as well as the preceding audit, are entitled to deference. A taxpayer is required to provide documentation explaining and supporting its challenge that the Department's denial is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

If the Department reasonably believes that a taxpayer has not reported the proper amount of tax due, the Department shall propose an assessment of unpaid tax based on the best information available to the Department. IC § 6-8.1-5-1(b). The amount of the proposed assessment "is considered a tax payment not made by the due date" and is subject to penalties and interest. *Id.* Notice of the proposed assessment shall be sent to

the taxpayer stating that it has sixty (60) days in which to pay the assessment or file a written protest. IC § 6-8.1-5-1(b) and (d). If the taxpayer does not pay the proposed assessment or file a written protest in the sixty (60) day period "[t]he department shall demand payment, as provided in [IC 6-8.1-8-2\(a\)](#), of any part of the proposed tax assessment, interest, and penalties" IC § 6-8.1-5-1(j). In these situations, the Department "shall make the demand for payment in the manner provided in [IC 6-8.1-8-2](#)." IC § 6-8.1-5-1(k). In addition IC § 6-8.1-9.5-2 allows the Department to offset a taxpayer's refund to resolve an outstanding liability.

In this case, Taxpayer timely filed her 2015 return. On that return Taxpayer claimed \$2,650 in tax credits. Taxpayer claimed these credits were withholdings from her W2, Taxpayer maintains that she is entitled to a refund of the approximately \$260.

Indiana's withholding provision is found at IC § 6-3-4-8(a) which states in part as follows:

Except as provided in subsection (d), every employer making payments of wages subject to tax under this article, regardless of the place where such payment is made, who is required under the provisions of the Internal Revenue Code to withhold, collect, and pay over income tax on wages paid by such employer to such employee, shall, at the time of payment of such wages, deduct and retain therefrom the amount prescribed in withholding instructions issued by the department. The department shall base its withholding instructions on the adjusted gross income tax rate for persons, on the total rates of any income taxes that the taxpayer is subject to under [IC 6-3.5](#), and on the total amount of exclusions the taxpayer is entitled to under [IC 6-3-1-3.5\(a\)\(3\)](#) and [IC 6-3-1-3.5\(a\)\(4\)](#).

Taxpayer believes that she is entitled to a refund of the \$1,000 in withholding under the provisions of IC § 6-3-4-8(h) which provides as follows:

Amounts deducted from wages of an employee during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such employee for the employee's taxable year which begins in such calendar year, and a return made by the employer under subsection (b) shall be accepted by the department as evidence in favor of the employee of the amount so deducted from the employee's wages. *Where the total amount so deducted exceeds the amount of tax on the employee as computed under this article and [IC 6-3.5](#), the department shall, after examining the return or returns filed by the employee in accordance with this article and [IC 6-3.5](#), refund the amount of the excess deduction.* However, under rules promulgated by the department, the excess or any part thereof may be applied to any taxes or other claim due from the taxpayer to the state of Indiana or any subdivision thereof. No refund shall be made to an employee who fails to file the employee's return or returns as required under this article and [IC 6-3.5](#) within two (2) years from the due date of the return or returns. In the event that the excess tax deducted is less than one dollar (\$1), no refund shall be made.

Taxpayer claims that she is entitled to the withholding stated on her return because her employer withheld Indiana state and county tax on her W2. In addition, Taxpayer claims that her paycheck shows taxes taken out as well. Taxpayer claims that her employer is no longer in business and therefore she cannot obtain a W2. Taxpayer requests the Department to look into her employer's taxes reported with the Department to show that they remitted the state and county taxes.

Taxpayer did not provide her paycheck, W2, or any other supporting documentation to support her protest. Furthermore, there is nothing in Indiana law which allows the Department to look at another taxpayer's tax records. Moreover, if the Department attempted to do as Taxpayer suggests, the Department would be violating the tax confidentiality requirements found in IC § 6-8.1-7-1(a) that prohibits the Department from sharing one taxpayer's information—i.e., the employee's tax information—with another taxpayer—i.e., the employer. Unlike the S-corporation withholding statute where the legislature has given the Department express authority, in IC § 6-3-4-13(i), for the shareholder's tax information to be shared with the S-corporation and to relieve the S-corporation of its withholding tax liability when the adjusted gross income tax has been paid by the shareholder, the Indiana legislature has not provided this remedy for employers with withholding tax liabilities.

Taxpayer claims that employer remitted state and county withholding tax, but Taxpayer has not provided any documentation to support this claim. IC § 6-8.1-5-1(c) places the burden on the Taxpayer to prove the assessment incorrect. Taxpayer has not met her burden as required by law, thus her protest is denied.

FINDING

Taxpayer's protest is respectfully denied.

August 23, 2019.

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